

# COUNTY OF YORK

## MEMORANDUM

**DATE:** December 5, 2003 (BOS Mtg. 12/16/03)

**TO:** York County Board of Supervisors

**FROM:** James O. McReynolds, County Administrator

**SUBJECT:** Application No. ZT-80-03, York County Planning Commission –  
Chesapeake Bay Preservation Area Regulations

This application was tabled at the December 2<sup>nd</sup> Board meeting to allow further consideration of the comments received at the public hearing. The Board has scheduled the application for discussion at its work session on December 9, 2003 and staff will be available at that time to answer questions and provide follow-up information from a tentatively scheduled December 8, 2003 meeting with representatives of the Peninsula Homebuilders Association. Any changes to the staff's recommendation resulting from that meeting will be reported to the Board at the December 9<sup>th</sup> work session. Furthermore, any revisions directed by the Board as a result of the work session discussion will be incorporated into a revised ordinance which staff should be able to provide to the Board on December 10<sup>th</sup> so that it could be considered at the December 16<sup>th</sup> meeting.

Based on the discussion and comments at the December 2<sup>nd</sup> meeting, staff would offer and emphasize the following comments and observations:

- The proposed amendments are necessary to bring the County's Chesapeake Bay provisions into conformance with the regulations and policy guidance adopted by the Chesapeake Bay Local Assistance Board (CBLAB). Although CBLAB adopted the revised regulations in March 2002, CBLAB's policy guidance was not finalized until September 15, 2003, thus delaying staff's ability to finalize a proposal for consideration. In accordance with the state regulations, localities are required to have their ordinances updated and adopted by December 31, 2003. While CBLAB expects localities to meet the December 31<sup>st</sup> deadline, we understand that good faith efforts that extend slightly beyond that time will be tolerated.
- The Chesapeake Bay Preservation Area regulations have been in effect since 1990. York County has consistently enforced those regulations since that time. The majority of the requirements in the proposed amended regulations are the same as those that have been in effect since 1990. Because of changes in the organization of the ordinance, it may appear that many new requirements are being added. That is not the case and many of the changes fall into the formatting, clarification and simplification categories.
- In staff's opinion, the most significant change that we are being required to implement deals with the issue of "water bodies with perennial flow." It is this

change that causes the extent of the RPA and RMA designations to increase (RPA increase of approximately 2,100 acres; RMA increase of approximately 3,900 acres) and it is the perennial flow determinations and verifications that we believe will cause a need for additional staff resources. It is important to note that there are provisions written into the draft ordinance that will enable administrative relief for existing lots adversely impacted by the perennial flow issue. These provisions have been proposed by staff as an alternative to requiring all such issues to be referred to the Board of Zoning Appeals.

- Another significant change involves permissible encroachments and disturbance within the RPA. CBLAB has changed the regulations to explicitly prohibit *accessory* structures from being authorized administratively in the RPA. In addition, the new regulations specifically state that no construction-related disturbances can take place in the RPA, thus eliminating our ability to continue authorizing the 15-foot construction-related encroachment that has been our practice. These two changes prompted the staff to recommend the new (and optional) requirement for an offset from the RPA equal to the applicable yard requirement for the district in which located (see attached diagram). It is important to note that this requirement would apply only to newly created lots (i.e., those platted after the effective date of the proposed ordinance).

Staff recommends this approach as a way to ensure that future lot owners have a usable building envelope on the property within which principal and accessory structures can be built and typical uses can be made of the surrounding yard areas. It is staff's opinion that the yard dimension could be accommodated in planning an initial subdivision layout, most likely without any impact on lot yield. The benefit is that future homeowners would have at least a minimum usable area outside the RPA to use for decks, room additions, accessory structures, or even an open yard area (since the RPA must be left essentially in its natural state). It is staff's opinion that the offset would be 20 feet in most circumstances (assuming the Board's adoption of the Planning Commission's recommendations concerning cluster development yard requirements) since cluster subdivisions have been and most likely will continue to be the development technique of choice. Again, staff does not perceive this to be an unreasonable dimension to accommodate from the outset in a subdivision design given the long-term benefits it will provide to future lot owners. For those subdivision proposals not using the cluster technique, the offset requirement would most likely be 50 feet, the rear yard requirement for the RR zoning district. This dimension could present greater challenges in maximizing lot yield. Again, the important point to remember is that the offset provision would apply only to lots proposed/platted after the effective date of the amendments.

Alternatively, if construction is to be allowed to be placed at the RPA boundary, additional temporary and long-term precautions and notices may be in order. For example, staff would suggest that silt fence and construction fencing be required along the RPA during construction. Further, in addition to the notations required on the subdivision plat concerning the location of the RPA, the Board might wish

to require (as does James City County) permanent warning signs posted on each lot along the RPA boundary.

- The proposed Chesapeake Bay Preservation Area Guidelines are another optional feature of the materials recommended by the Planning Commission and staff. As noted in the previous memorandum, these guidelines will operate in the same manner as the Sewer and Water Regulations that accompany the County's utilities ordinances. They would be approved initially by the Board and be subject to interim interpretation / adjustment by the County Administrator with an annual ratification process through the Board. The provisions proposed in the guidelines document have been developed over the years since the original adoption of the Bay Regulations and have been used to provide citizens with clarifications and guidance concerning what is allowed or restricted. While the assemblage of these guidelines into a single document to be approved by the Board is new, the practices themselves have guided staff and applicants informally in the day-to-day application of the ordinance and, therefore, are not new.

Again, it is important to emphasize that 95% of the proposed ordinance reflects provisions that are already in place and that have been in place since the County's initial adoption of the Chesapeake Bay Preservation Area regulations in 1990. The majority of the provisions that are revised or new are necessary (mandatory) to achieve compliance with the revised state regulations and policy guidance.

Staff stands ready to provide additional details and information at the Board's request.

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